

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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CERIOUS D. McCRAY,

And

LYDIA R. McCRAY,

Plaintiffs,

v.

STATE OF NEW YORK, et al,

Defendants.

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**DECISION AND ORDER**  
15-CV-409-A

This prisoner civil rights case was referred to Magistrate Judge H. Kenneth Schroeder, Jr. pursuant to 28 U.S.C. § 636(b)(1) for the performance of pretrial proceedings.

On October 24, 2023, Magistrate Judge Schroeder issued a Report, Recommendation and Order (“RR&O”) (Dkt. No. 77) recommending: that the Court grant Defendants Alan H. Angell, Steven Belloma, Peter Braselman, Paul Chappius, Jr., Zebra Cicconi-Crozier, Kate Dewar, Lucious Girardi, Pokum Kwan, A. Stamp, Joanne Seeley, David Taft, Marshall Trabout, and Roger Wellman (hereinafter “Individual Defendants”) motion to dismiss (Dkt. No. 30); and that the Court grant in part Defendant Arnot Ogden Medical Center’s motion to dismiss (Dkt. No. 24).

Federal Rule of Civil Procedure 72(b)(3) provides, “[t]he district judge must determine de novo any part of the magistrate judge’s disposition *that has been properly objected to*” (emphasis added). Here, no objections to the RR&O have

been filed. “When no timely objection is filed, the [C]ourt need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” 1983 Advisory Committee Note to Fed. R. Civ. P. 72(b); see *Patton v. Ford Motor Co.*, 14-CV-0308-RJA-HBS, 2017 WL 2177621, 2017 U.S. Dist. LEXIS 76148, \*5 (W.D.N.Y. May 18, 2017) (same).

The Court finds no clear error with respect to Magistrate Judge Schroeder’s recommendations. As such, it is hereby

**ORDERED** that pursuant to 28 U.S.C. § 636(b)(1) and for the reasons set forth in the RR&O, the Individual Defendants’ motion to dismiss (Dkt. No. 30) is GRANTED, in that all Plaintiff’s claims against such Individual Defendants are DISMISSED; and it is further

**ORDERED** that Defendant Arnot Ogden Medical Center’s motion to dismiss (Dkt. No. 24) is GRANTED IN PART, in that Plaintiffs’ claims brought pursuant to 42 U.S.C. § 1983 and the Emergency Medical Treatment and Active Labor Act (“EMTALA”), 42 U.S.C. § 1395dd, against Defendant Arnot Ogden Medical Center, are DISMISSED.

The Clerk of Court shall enter Judgment consistent with this Decision and Order.

**IT IS SO ORDERED.**

s/Richard J. Arcara  
HONORABLE RICHARD J. ARCARA  
UNITED STATES DISTRICT COURT

Dated: December 28, 2023

Buffalo, New York